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Paper No. 5

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**DEC 17 2001**

**OFFICE OF PETITIONS**

In re Application of	:	
Dan Stanek et al	:	DECISION DISMISSING
Application No. 09/864,972	:	PETITION
Filed: May 25, 2001	:	
Attorney Docket No. 112690-045	:	

This is a decision on the communication filed October 15, 2001, requesting that the above-identified application be accorded a filing date of May 25, 2001.

Petitioners allege that the application was deposited in Express Mail service on May 24, 2001, under 37 CFR 1.10, and should be accorded that date as the filing date instead of the presently accorded filing date of May 25, 2001.

37 CFR 1.10(a) states that:

Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See § 1.6(a).

37 CFR 1.10(c) states that:

(c) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date

as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
- (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

As clearly stated in 37 CFR 1.10(a), the date of deposit with the United States Postal Service (USPS) is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. Thus, any petition alleging that the PTO did not accord a paper the date of deposit in Express Mail service as the filing date must be accompanied by "a true copy of the 'Express Mail' mailing label showing the 'date-in,' and of any other official notation by the USPS relied upon to show the date of deposit." 37 CFR 1.10(c)(3).

The present petition is not accompanied by the evidence required by 37 CFR 1.10.

Accordingly, the petition is dismissed.

Any request for reconsideration of this decision should be filed within **TWO MONTHS** of the date of this decision in order to be considered timely (see 37 CFR 1.181(f)) and should be addressed as follows:

By mail:            U.S. Patent and Trademark Office  
                          Box DAC  
                          P.O. Box 2327  
                          Arlington, VA 22202

By facsimile: (703) 308-6916  
                          Attn: Office of Petitions

By hand:                   Office of Petitions  
                                 2201 South Clark Place  
                                 Crystal Plaza 4, Suite 3C23  
                                 Arlington, VA 22202

Receipt is acknowledged of the substitute drawings filed October 15, 2001, in response to the Notice mailed July 24, 2001.

The application is being returned to Initial Patent Examination Division with the presently accorded filing date of May 25, 2001.

Telephone inquires specific to this matter should be directed to Wan Laymon at (703) 306-5685.

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Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy